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COURT OF CRIMINAL APPEALS
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No. PD-1213-20

FILED
COURT OF CRIMINAL APPEALS
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IN THE

COURT OF CRIMINAL APPEALS

OF TEXAS

STATE OF TEXAS,

Petitioner

vs.

BOBBY CARL LENNOX
a/k/a BOBBY CARL LEANOX,

Respondent

Petition for Discretionary Review
from the Sixth Court of Appeals (Texarkana)

LENNOX'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE

Nature of case: This is an appeal from a conviction for three counts of forgery of a financial instrument, in violation of Texas Penal Code § 32.21, which is a state jail felony. (CR 91,94,97). The convictions included a habitual offender finding for each, escalating the punishment to that of a second degree felony. (CR 91,94,97).

Judge/Court: Judge Wes Tidwell sitting in the 6th District Court of Lamar County, Texas. (CR 91,94,97).

Pleas: Bobby Carl Lennox (Lennox) entered pleas of not guilty to the three charges against him. (CR 91,94,97) (RR 66). Lennox pled not true to all the enhancement allegations. (CR 91,94,97) (RR 3:148-149).

Trial disposition: The jury found Lennox guilty of all three counts. (CR 66). The Jury also found all the enhancement allegations true. (CR 77). The jury recommended a sentence of 17 years on each of the three offenses. (CR 77). The trial court imposed those three sentences, and ran them concurrently. (CR 91,94,97)(RR 3:238).

STATEMENT OF PROCEDURAL HISTORY

Appellate Court Opinion: On February 20, 2020, the Sixth Court of Appeals issued its original opinion unanimously modifying the three judgments of forgery of a financial instrument to be class B misdemeanor's enhanced and remanding the cases for new punishment hearings. *Lennox v. State of Texas*, No. 06-19-00164-CR (Tex. App.—Texarkana Feb. 20, 2020)(opinion withdrawn). However, after the State filed a motion for rehearing, the appellate court withdrew its original opinion and issued another opinion on November 23, 2020, finding egregiously harmful jury-charge error and again reformed the judgments to reflect three class B misdemeanor convictions and remanded the case for a new punishment hearing. *Lennox v. State of Texas*, No. 06-19-00164-CR (Tex. App.—Texarkana Nov. 23, 2020, pet. granted) (opinion on rehearing), *available at*: https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=578c3f0c-c528-4854-a488-41a84b080c4e&coa=coa06&DT=Opinion&MediaID=976b16ff-86a2-45ed-9d72-5f0c37259a38.

Motion for Rehearing: Neither party filed a motion for rehearing directed to the opinion on rehearing.

STATEMENT OF FACTS

It is undisputed that James McKnight had a checking account at Guarantee Bank. (RR 4:Ex. 1). James McKnight died on May 11, 2018. (RR 3:72). The checking account was closed on June 6, 2018. (RR 4:Ex. 1). An estate sale of his personal property was conducted by Frankie Norwood in December of 2018. (RR 3:52). In preparing for that sale, his bank checks were located and given to James McKnight's daughter. (RR 3:53,72). Norwood employed Janae Lewis, Brandon Crawford and his girlfriend, Destiny Brush to assist in that sale. (RR 3:52). Brandon Crawford is a friend of Bobby Lennox. (RR 3:92). Later, three checks were debited to McKnight's Guarantee Bank account as follows:

check #1092 written 1/7/19 to Bobby Lennox in the amount of $137.00

check #1097 written 1/9/19 to Bobby Lennox in the amount of $150.00

check #1099 written 1/9/19 to Bobby Lennox in the amount of $130.00

(RR 4:Ex. 1). The checks were cashed on January 9 and 12, 2019 by Bobby Lennox at the Quick Track convenience store in Deport. (RR 3:58-59)(RR 4:Ex. 1). However, Bobby Lennox paid all the money back to the owner of Quick Track store. (RR 3:63).

The State alleges that Bobby Lennox cashed these three checks knowing they were forged.

Lennox contends that he was asked to cash the checks for a friend and didn't know that they were forged. (RR 3:95,179).

Issue Presented

Sole Issue: (Restated) § 32.21(e-1) applies if the purpose was to obtain property or services. Other interpretations ignores language in the provision, causes due process/due course of law concerns, raises a vagueness issue and leads to unjust results. Additionally, this is not a punishment issue based upon the holding in *Olivia v. State* and the wording of § 32.21.

Summary of the Argument

Sole Issue: (Restated) § 32.21(e-1) applies if the purpose was to obtain property or services. Other interpretations ignores language in the provision, causes due process/due course of law concerns, raises a vagueness issue and leads to unjust results. Additionally, this is not a punishment issue based upon the holding in *Olivia v. State* and the wording of § 32.21.

The Court of Appeals concluded that section 32.21(e-1) applies if the actor's purpose was to obtain, or attempt to obtain, property or services and is not a punishment issue. The State's counter interpretation, that the State has discretion to indict under subsection (b) or subsection (e-1), ignores language in the provision, causes due process/due course of law concerns, raises a vagueness issue, and leads to unjust results. The State's alternative interpretation, that subsection (e-1) is solely a punishment issue, is not established by the opinion in *Olivia v. State* and is not supported by the logic behind the holding in *Olivia v. State*. Additionally, the wording of section 32.21 does not support such a conclusion.

ARGUMENT

Sole Issue: (Restated) § 32.21(e-1) applies if the purpose was to obtain property or services. Other interpretations ignored language in the provision, causes due process/due course of law concerns, raises a vagueness issue and leads to unjust results. Additionally, this is not a punishment issue based upon the holding in *Olivia v. State* and the wording of § 32.21.

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The Appeal

The Court of Appeals concluded that when "an actor engaged in conduct to obtain or attempt to obtain a property or service" the value ladder offense classification scheme found in Texas Penal Code section 32.21(e-1) applies. *Lennox v. State of Texas*, No. 06-19-00164-CR, pg. 23-7 (Tex. App.—Texarkana Nov. 23, 2020, pet. granted)(opinion on rehearing); *see also State of Texas v. Green*, 06-20-00010-CR (Tex. App.—Texarkana Nov. 23, 2020, pet. granted). Thus, the purpose of the actor's

forgery, found in subsection (e-1), is an additional element of the offense. *Id.*

Here, the State alleged in the indictment only that Lennox acted with intent to defraud or harm another (CR 6), which is the general forgery intent. *See* Tex. Pen. Code § 32.21(b). The State omitted any allegation that Lennox did so to "obtain or attempt to obtain a property or service." *See* Tex. Pen. Code § 32.21(e-1). Therefore, the indictment on its face alleged three violations of Texas Penal Code section 32.21(d), which were all state jail felony offenses. *Id.* This vested the trial court with jurisdiction.

However, the indictment also incorporated images of the three checks which contained the dollar amounts. *Id.* at 23-5. Those dollar amounts fell within the class B misdemeanor level ($100-$750) expressly provided under of Texas Penal Code section 32.21(e-1)(2). *Id.* at 23-5. This matched with the evidence and argument at trial. *Lennox*, No. 06-19-00164-CR at pg. 10-11. However, the charge inquired as to three state jail felonies, but did not inquire as to Lennox's purpose with regard to subsection (e-1). Thus, the charge contained egregiously harmful error. *Id.* at 23-5.

State's Argument

Independent Offenses

The State argues that this Court should interpret the 2017 amendments to Texas Penal Code section 32.21 as not to change the prior felony offense under subsection (b) and to mean that the writing is the "essential" element of the offense, but not the amounts involved from subsection (3-1). In this situation, involving the

forgery of a check/writing, the State can simply choose to charge such an offense as either a State jail felony under subsection (b), or as one of the offenses listed under (e-1). Here, the State alleged a state jail felony in the indictment. Accordingly, the "value ladder" contained in subsection (e-1) of section 32.21 is simply irrelevant to this case.

Punishment Issue

Alternatively, the State correctly notes that this Court should not interpret a statute literally, when it leads to absurd results. The State contends the Court of Appeals' interpretation of Texas Penal Code section 32.21 is just such an absurd result and proposes instead that this Court should interpret the "value ladder" contained in section 32.21(e-1) as an issue to be decided in, and as only relevant to, the punishment phase of the trial. *See Oliva v. State*, 548 S.W.3d 518, 522-534 (Tex. Crim. App. 2018). Thus, subsection (e-1) is similar to punishment enhancement issues.

Lennox's Response

Texas Penal Code section 32.21 does not contain overlapping independent offense. Rather, the forgery offense is expressly "subject to" to specific value amounts, including the purpose for the action, contained in subsection (e-1). Additionally, the State's alternative interpretation, that subsection (e-1) is solely a punishment issue, is not established by the opinion in *Olivia v. State* and is not supported by the logic behind the holding in *Olivia v. State*. Additionally, the wording

of section 32.21 does not support such a conclusion.

1. § 32.21 Does Not Contain Two Overlapping and Freestanding Offenses

Texas Penal Code section 32.21 does not contain overlapping and independent offenses, under subsection (b) and subsection (e-1) respectively, which the State can unilaterally decide which to pursue. This argument (1) ignores the "subject to" language in section 32.21(d) and (e), (2) would cause due process/due course of law concerns, (3) create a vagueness issue, and (3) leads to unjust results.

a. Ignores the "Subject To" Language

The State's interpretation ignores the "subject to" language in section 32.21 (d) and (e) because the State's interpretation of the provision would have the same meaning without the "subject to" language.

The 2017 amendment to section 32.21 expressly provides that subsection (d) and (e) are "subject to Subsection (e-1)". *See Tex. Pen. Code § 32.21.* This means that subsections (d) and (e) are subservient to, limited by, subsection (e-1). *See In re Houston Cty. ex rel Session*, 515 S.W.3d 334, 341 (Tex. App.—Tyler 2015, orig. proceeding)(quoting *Cockrell v. Tex. Gulf Sulphur Co.,* 299 S.W.2d 672, 676 (Tex. 1956)); *see also* R.R. *St. & Co. v. Pilgrim Enters., Inc.*, 166 S.W.3d 232, 247 (Tex. 2005)(dominant relationship created).

However, the State's interpretation gives no affect to that language because the subsections would be, in effect, overlapping but independent of each other. As such

section 32.21 would have the same meaning as advanced by the State if the "subject to" language in subsections (d) and (e) were removed. Therefore, the State's interpretation would not give every word a purpose. *See Sims v. State*, 569 S.W.3d 634, 640 (Tex. Crim. App. 2019)(citing *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997); *see also* Tex. Gov't Code § 311.021(2).

The State further argues that had the legislature intended such a result it would have also expressly made subsection (b) "subject to" subsection (e-1). However, subsection (b) defines the core forgery offense. *See* Tex. Pen. Code § 32.21(b). The punishment level for that offense is addressed separately in subsections (c), (d), and (e), which all expressly reference subsection (e-1). *See* Tex. Pen. Code § 32.21(b),(c), and (e). Therefore, the legislature need not provide that subsection (b) was "subject to" subsection (e-1).

b. Due Process/due Course of Law Concerns

The State's interpretation gives rise to due process and due course of law concerns. Under the State's interpretation, the same offense could be charged as either a state jail felony or a class B misdemeanor, based solely upon the discretion of the prosecutor. As such, the more serious charge would violate Lennox's due process and due course of laws rights.

This Court concluded in *Azeez v. State* as follows:

> In construing penal provisions this Court has on a number of occasions found two statutes to be in pari materia, where one provision has broadly defined an offense, and a second has more narrowly hewn another offense, complete within itself, to proscribe conduct that would

> otherwise meet every element of, and hence be punishable under, the broader provision. In the case in which the special statute provides for a lesser range of punishment than the general, obviously an "irreconcilable conflict" exists, and due process and due course of law dictate that an accused be prosecuted under the special provision, in keeping with presumed legislative intent.

Azeez v. State, 248 S.W.3d 182, 192 (Tex. Crim. App. 2008) (quoting *Mills v. State,* 722 S.W.2d 411, 414 (Tex. Crim. App. 1986)).

Here, the same offense is similarly more broadly defined by section 32.21(b) and more specifically defined by section 32.21(e-1)(2). *See* Tex. Pen. Code § 32.21(b) and (e-1)(2). As such, due process and due course of law principals required application of the more specific provision. However, the State's interpretation of section 32.21 does not apply the more specific provision as required by *Azeez.*

c. Vagueness Issue

The State's interpretation gives rise to a vagueness issue because a statute can be unconstitutionally vague when it provides wide discretion without any guidelines for law enforcement, potentially giving rise to arbitrary and discriminatory enforcement.

A statute can be unconstitutionally vague if it does not provide "minimal guidelines to govern law enforcement". *See State v. Edmond*, 933 S.W.2d 120, 125-126 (Tex. Crim. App. 1996)(quoting *Koldender v. Lawson*, 461 U.S. 352, 357 (1983). The reason is that without such guidance, a penal statute might be susceptible to arbitrary and discriminatory enforcement. *Id.* As such, an interpretation of a statute giving rise to such a problem should be avoided. *See Jones v. United States*, 526 U.S. 227, 323 (1999)

(quoting *United States ex rel. Attorney Gen. v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)).

The State's interpretation would freely allow the State to charge the exact same conduct as either a state jail felony or a class B misdemeanor, based solely upon the prosecutor's discretion. Such an interpretation could be unconstitutionally vague.

d. Lead to Unjust Results

The State's interpretation gives rise to unjust results because it allows the State to forgo proving the additional elements of (1) engaging in the conduct to obtain or attempt to obtain a property or service, and (2) with a value of $100 - $750, thereby increasing the offense level and the applicable punishment.

Under the State's interpretation, the State could charge and prosecute the offense as a state jail felony under section 32.21(d), as it did here. Alternatively, the State could allege and prove the additional elements of (1) engaging in the conduct to obtain or attempt to obtain a property or service, and (2) with a value of $100 - $750, thereby decreasing the offense to a class B misdemeanor with the applicable reduced punishment. A state jail felony is a felony conviction with a potential punishment of 180 days to two to ten years with a $10,000 fine. *See* Tex. Pen. Code § 12.35. Additionally, here, the punishment was enhanced to that of a second degree felony, which has a punishment range of 2 to 20 years and a $10,000 fine. *See* Tex. Pen. Code §12.35. A class B misdemeanor includes a sentence of up to 180 days in jail and a fine up to $2,000. *See* Tex. Pen. Code § 12.22.

This massive decrease in the offense level and the punishment would only result if the State voluntarily undertook the additional work and proof at trial. As such, the State's interpretation could lead to unjust results. Here, Lennox received three state jail felony convictions (with the punishments enhanced) resulting in three 17 year convictions, all because the State did not undertake additional work and proof at trial to establish the offenses as three class B misdemeanors. Based upon the example of the facts in Lennox's case, the State's interpretation leads to unjust results.

2. Subsection (e-1) Is Not a Punishment Issue (*Olivia v. State*)

The State's alternative interpretation, that subsection (e-1) is solely a punishment issue, is not established by the holding in *Olivia v. State* and is not supported by the logic behind the holding in *Olivia v. State*. Additionally, the wording of section 32.21 does not support such a conclusion.

The State contends that the inclusion of the phrase "if it is shown on the trial of an offense . . .. " in subsection (e-1) restricts its application to the punishment phase only. The State directs the Court to *Olivia v. State.* 548 S.W.3d 518, 521 (Tex. Crim. App. 2018)(citing *Wilson v. State*, 722 S.W.2d 118, 123 (Tex. Crim. App. 1989)). In *Olivia v. State*, the court noted that the phase is "associated" with punishment enhancements. *Olivia v. State,* 548 S.W.3d 518, 527 (Tex. Crim. App. 2018). However, the court also noted that it is not always true. *Id.* (citing Tex. Pen. Code § 49.09(b)). Thus, the inclusion of the phrase does not automatically relegate the issue to the punishment phase.

Additionally, the State does not argue that the provision at issue is an enhancement issue. Rather, in essence the State argues the opposite, that it is a kind of de-enhancement. That is, the amount of the check "de-enhanced" the offense from the default level of a state jail felony pursuant to Texas Penal Code section 32.21(d), to a class B misdemeanor pursuant to Texas Penal Code section 32.21(e-1). Obviously, enhancement issues are relegated to the punishment phase of the trial to prevent prejudice to the defendant during the guilt-innocence phase based upon prior convictions. *See, e.g., Johnson v. State*, 901 S.W.2d 525, 532 (Tex. App.—El Paso 1995, pet. ref'd)(enhancements not read until punishment phase to prevent prejudice). That same logic simply doesn't apply to a de-enhancement, such as this. The fact that the amount of the check at issue was $130 and $150 doesn't involve the same prejudicial affect as a prior criminal conviction. Accordingly, treating subsection (e-1) as a sort of de-enhancement to only be considered during the punishment phase of a trial, doesn't involve the same logic as such treatment for an enhancement.

Additionally, subsection (e-1) lacks the words"punishment" or "punishable", which support a conclusion that an issue is a punishment issue. *See Olivia v. State,* 548 S.W.3d 518, 527 (Tex. Crim. App. 2018). Subsection (b) states that "an offense under this section is a state jail felony" which contradict subsection (e-1) which provides numerous other offense levels. *See* Tex. Pen. Code § 32.21(b) and (e-1). These factors tend to establish that subsection (e-1) is not a punishment issue. *See Olivia v. State,* 548 S.W.3d 518, 528, 530 (Tex. Crim. App. 2018).

For these reasons, subsection (e-1) should not be interpreted as a punishment

issue as proposed by the State.

3. Conclusion

The State contends that this Court should conclude that although the plain meaning of section 32.21 was determined by the Court of Appeals, such an interpretation leads to absurd results and should be disregarded. *See Boykin v. State*, 818 S.W.2d 782, 785, 786 (Tex. Crim. App. 1991). However, the opposite is true. The State's proposed interpretation (1) ignores the "subject to" language in section 32.21(d) and (e), (2) would cause due process/due course of law concerns, (3) create a vagueness issue, (4) lead to unjust results. Additionally, the State's argument that subsection (e-1) is a punishment issue only might make sense for an enhancement (where such evidence could be prejudicial during the guilt innocence phase) but does not where the provision would de-enhance the punishment, as it would here. Additionally, the language of section 32.21 weighs against such an interpretation.

The Court of Appeals' interpretation of section 32.21 gives the provision its plain meaning and prevents the problems associated with the State's proposed interpretation. Prior to the amendment of section 32.21, the elements of the basic offense of forgery were (1) with intent to defraud or harm another, (2) passed, (3) a writing, (4) that purported to be the act of another, and (5) that other persons did not authorize the act. *Velu v. State*, No. 10-07-00327-CR (Tex. App.—Waco, Feb. 25, 2009, pet. ref'd) (mem. op.) (citing Tex. Pen. Code § 32.21(a), (b) and *Williams v. State*, 688 S.W.2d 486, 488 (Tex. Crim. App. 1985)). After the amendment in 2017, Texas

Penal Code section 32.21 now provides as follows:

Forgery

(a) For purposes of this section:
  (1) "Forge" means:
    (A) to alter, make, complete, execute, or authenticate any writing so that it purports:
      (i) to be the act of another who did not authorize that act;
      (ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or
      (iii) to be a copy of an original when no such original existed;
    (B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or
    (C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B).
  (2) "Writing" includes:
    (A) printing or any other method of recording information;
    (B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and
    (C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided by Subsections (d), (e), and (e-1), an offense under this section is a Class A misdemeanor.

(d) Subject to Subsection (e-1), an offense under this section is a state jail felony if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check, authorization to debit an account at a financial institution, or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) Subject to Subsection (e-1), an offense under this section is a felony of the third degree if the writing is or purports to be:
  (1) part of an issue of money, securities, postage or revenue stamps;
  (2) a government record listed in Section 37.01(2)(C); or
  (3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock,

bonds, or other instruments representing interests in or claims against another person.

(e-1) If it is shown on the trial of an offense under this section that the actor engaged in the conduct to obtain or attempt to obtain a property or service, an offense under this section is:
- (1) a Class C misdemeanor if the value of the property or service is less than $100;
- (2) a Class B misdemeanor if the value of the property or service is $100 or more but less than $750;
- (3) a Class A misdemeanor if the value of the property or service is $750 or more but less than $2,500;
- (4) a state jail felony if the value of the property or service is $2,500 or more but less than $30,000;
- (5) a felony of the third degree if the value of the property or service is $30,000 or more but less than $150,000;
- (6) a felony of the second degree if the value of the property or service is $150,000 or more but less than $300,000; and
- (7) a felony of the first degree if the value of the property or service is $300,000 or more.

(e-2) Notwithstanding any other provision of this section, an offense under this section, other than an offense described for purposes of punishment by Subsection (e-1)(7), is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

(f) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more writings of the same type and if each writing is a government record listed in Section 37.01(2)(C).

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Tex. Pen. Code § 32.21. Thus, the elements of the offense of forgery, under sub-section (b), are still (1) with intent to defraud or harm another, (2) passed, (3) a writing, (4) that purported to be the act of another, and (5) that other persons did not authorize the act. *See Velu v. State*, No. 10-07-00327-CR (Tex. App.—Waco, Feb. 25, 2009, pet. ref'd) (mem. op.) (citing Tex. Pen. Code § 32.21(a), (b) and *Williams v. State*,

688 S.W.2d 486, 488 (Tex. Crim. App. 1985)).

However, pursuant to section (e-1)(2), if (a) "the actor engaged in the conduct to obtain or attempt to obtain a property or service" and (b) the value of the property is $100 to $750, then the offense is a class B misdemeanor. Thus, section (e-1)(2) modifies the elements of this particular offense to: (1) with intent to defraud or harm another, *(1a) to obtain or attempt to obtain a property or service*, (2) passed, (3) a writing, *(3a) with a value of $100 to $750*, (4) that purported to be the act of another, and (5) that other persons did not authorize the act. Accordingly, there are two elements that separate the state jail felony forgery found in section 32.21(b) and the class B misdemeanor found in section 32.21(e-1)(2): the additional intent element and the specific value.

Viewing 32.21 as a whole, when the actor's purpose was to obtain or attempt to obtain a property or service, the value ladder in subsection (e-1) is applicable. *See Green*, No. 06-20-00010-CR at 29-31. This would include the majority of forgery cases. *Id.* If the actor's purpose was something else, the type of writing involved determines the classification of the offense. *Id.* Finally, subsection (e-1) controls over subsections (d) and (e). *Id.*

This comports with the legislative history which provides "S.B. 1824…updates the threshold ladder for forgery crimes related to fake checks, money orders, and other simple transactions to match the penalty ladder for the rest of Texas' theft offenses." Senate Comm. On Criminal Justice, Bill Analysis, Tex. S.B. 1824, 85th Leg. R.S. (2017); *see also* Tex. Pen. Code § 31.03 (theft provision). It further provides "S.B.

1824 amends Section 32.21, Penal Code, to bring the offense of forgery in line with the damage amounts for all other property crimes." *Id.*

Applying this interpretation of section 32.21, the Court of Appeals correctly concluded that the indictment on its face alleged three violations of Texas Penal Code section 32.21(d), state jail felony offenses, bestowing the trial court with jurisdiction. *Lennox*, No. 06-19-00164-CR at 23(concurrence) (citing *Kirkpatrick v. State*, 279 S.W.3d 324 (Tex. Crim. App. 2009)). However, the indictment also incorporated images of the three checks which contained the dollar amounts. *Id.* at 23-5. Those dollar amounts fell within the class B misdemeanor level ($100-$750) expressly provided under section 32.21(e-1)(2). *Id.* at 23-5. At trial, the evidence established those amounts and that Lennox's purpose was to obtain or attempt to obtain a property or service. *Lennox*, No. 06-19-00164-CR at 10-11. Regardless, the charge inquired as to three state jail felonies, but did not inquire as to Lennox's purpose with regard to subsection (e-1). Thus, the charge contained egregiously harmful error. *Id.* at 23-5.

PRAYER

WHEREFORE, premises considered, Lennox respectfully requests that the State's Petition or Discretionary Review be dismissed, or the judgment of the Court of Appeals be affirmed in whole or in part. Lennox further requests any and all such other relief to which he may be entitled.

Respectfully Submitted,

Miller, James, Miller & Hornsby, L.L.P.

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4, the undersigned counsel certifies that, exclusive of the exempted portions in Texas Rule of Appellate Procedure 9.4(i)(1), this brief on the merits contains 5,450 words (less than 15,000), based upon the word count of the WordPerfect program used to prepare the document.

_____
Troy Hornsby

CERTIFICATE OF SERVICE

This is to certify pursuant to Texas Rule of Appellate Procedure 9.5(a) that on May 13, 2021, I served a true and correct copy of the foregoing electronically filed document on the party or attorney on file with the electronic filing manager and that the electronic transmission was reported as complete.

Additionally, pursuant to Texas Rule of Appellate Procedure 9.5(b), a true and correct copy of the above and foregoing document has also been forwarded by the U.S. Mail or by email (as indicated) on all interested parties listed below:

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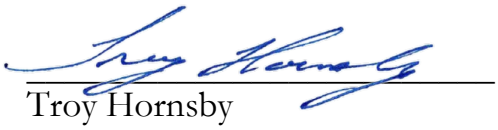

Troy Hornsby

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Envelope ID: 53399540
Status as of 5/14/2021 8:40 AM CST

Associated Case Party: STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Gary Young		gyoung@co.lamar.tx.us	5/13/2021 10:04:13 AM	SENT
Stacey Soule		Stacey.Soule@SPA.texas.gov	5/13/2021 10:04:13 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
JOHN MESSINGER		information@spa.texas.gov	5/13/2021 10:04:13 AM	SENT

Associated Case Party: BOBBY CARL LENNOX A/K/A BOBBY CARL LEANOX

Name	BarNumber	Email	TimestampSubmitted	Status
Troy Hornsby		troy.hornsby@gmail.com	5/13/2021 10:04:13 AM	SENT